

US V Scott Myers (Rev) 092706

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 * * * * *

4 UNITED STATES

Plaintiff

5 VERSUS

CR-03-10370-DPW

6 SCOTT MYERS

7 Defendant

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9
10 BEFORE THE HONORABLE DOUGLAS P. WOODLOCK

11 UNITED STATES DISTRICT COURT JUDGE

12 REVOCATION HEARING

13 SEPTEMBER 27, 2006

14 APPEARANCES:

15 RACHEL HERSHFANG, ESQ., Assistant United States Attorney,
16 United States Attorney's Office, One Courthouse Way, Suite
9200, Boston, Massachusetts 02210, on behalf of the
17 United States

18 PAGE KELLEY, ESQ., Federal Defender's Office, 408 Atlantic
Avenue, 3rd Floor, Boston, Massachusetts 02110, on behalf
19 of the Defendant

20 PROBATION OFFICER: Mr. Marshall

21 Courtroom No. 1 - 3rd Floor
22 1 Courthouse Way
Boston, Massachusetts 02210
11:50 A.M. - 12:15 P.M.

23 Pamela R. Owens - Official Court Reporter
24 John Joseph Moakley District Courthouse
1 Courthouse Way - Suite 3200
25 Boston, Massachusetts 02210

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1 THE COURT: Well, Ms. Kelley, where do we stand?

2 MS. KELLEY: Well, I think that the three of us --

3 Ms. Hershfang, Mr. Marshall and myself and I've also spoken
4 with Mr. Myers about this -- have agreed that a good solid

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5 course of treatment for him would be to go to Gosnold. And I
6 believe Mr. Marshall can address for the Court the details of
7 his office and the availability of a bed there. And Mr. Myers
8 is in agreement with this. He's anxious to go. He believes
9 that that's the best thing for him.

10 I have also talked with Nichelle Sadler, who is
11 here again in support of him. And she also thinks that this
12 would be a really good opportunity for him. And I think
13 incidentally he understands it's very expensive. It's an
14 opportunity that not a lot of people would get. It's his
15 second inpatient, which I think for Probation now is somewhat
16 unusual. And he really wanted to make the best of that
17 opportunity and take advantage of it. I would just -- yes?

18 THE COURT: Go ahead.

19 MS. KELLEY: I would also just like to stress, you
20 know, he was released from the last program in February. He
21 was testing positive then not until August. He did have some
22 months of success after the last program. After court last
23 time, I spoke with Ms. Sadler who informed me that sort of as a
24 family, they had a lot of really stressful developments which
25 Mr. Myers had not made me aware of. But Ms. Sadler had been

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1 diagnosed with a very serious chronic illness. Their 13-year-
2 old son was diagnosed with Type I Diabetes during that time and
3 she has explained to me that this really, she thought,
4 contributed to the stress on him and his relapse. So, I think
5 the only disagreement is that Probation is recommending to the
6 Court that he serve some time in Plymouth before he goes to
7 Gosnold. And I would just urge you to be lenient and allow him
8 to go on to Gosnold. He has been in Plymouth since he turned
9 himself in. And I don't exactly know the point of that. He

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10 understands now the seriousness of his non-compliance, that he
11 simply has to comply with every requirement of probation. He
12 can't take it upon himself to fashion his own plan for
13 himself. And, you know, I've also stressed to him this is not
14 just Probation telling him what to do. It's a court order and
15 he needs to submit to the authority of the Court. And I think
16 he understands that and is ready to take the next step.

17 Thank you.

18 THE COURT: Ms. Hershfang?

19 MS. HERSHFANG: Your Honor, I agree with
20 Ms. Kelley's characterization of the parties' agreements and
21 also disagreements. I concur with Mr. Marshall's request that
22 Mr. Myers do some time before he goes to Gosnold.

23 THE COURT: Some time?

24 MS. HERSHFANG: Four months, Your Honor. And I'd
25 be happy to have Mr. Marshall speak to that directly because I

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1 think he's the one with the better knowledge of Mr. Myers.

2 THE COURT: Just so I understand, he's been in
3 Plymouth how long now?

4 PROBATION OFFICER (MR. MARSHALL): He was taken
5 into custody last week, the 20th.

6 THE COURT: So essentially seven days?

7 PROBATION OFFICER (MR. MARSHALL): Yes.

8 Your Honor, just after the last hearing, I did have
9 the opportunity to consult with both attorneys, Mr. Myers'
10 current treatment provider at Adcare, Gosnold, my supervisor,
11 who is kind of a founding member of the CARE program, in order
12 to come back here today and be prepared to speak to you.

13 I think there's a couple -- two major issues going
14 on here. First obviously is Mr. Myers' drug abuse history and

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15 recent relapse. But there's also the issue of non-compliant
16 actions and decisions that Mr. Myers has made during the course
17 of his supervision. And the Probation Department feels
18 strongly that you can't address one without addressing the
19 other. And that is why we are still seeking a period of
20 incarceration, to address non-compliance not directly related
21 to drug abuse. Mr. Myers is a very smart individual. He has
22 known from day one what he needs to do, but he plays the game
23 unfortunately and manipulates and is not always truthful to the
24 Probation Department. And, so, those are some of the issues
25 which, of course, are outlined in the report.

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1 However, as far as the treatment aspect, we have
2 talked with Gosnold. They would be able to get him into
3 treatment as soon as really the Court wishes, whether it's
4 after a period of incarceration or, you know, within a few days
5 of today. We have done that before where someone is released
6 and they're picked up by Gosnold staff and brought right to the
7 facility. So that certainly is a possibility. We would be
8 able to pay for that for 90 days for the patient. And then a
9 standard course of discharge from Gosnold is that they will
10 recommend a sober house placement. The length usually varies a
11 little bit. But the Probation Department would feel that a
12 six-month placement in an approved sober house as opposed to,
13 say, the Coolidge House would be an appropriate kind of
14 continuation of his treatment plan and then also assess
15 Mr. Myers for his participation in CARE. Of course, that's a
16 voluntary program. All of these services we're talking about
17 were offered to Mr. Myers in August which he refused, but
18 certainly they are still on the table today.

19 THE COURT: Let me ask: with respect to the
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20 accounting, Probation will pay for 90 days. Is that the
21 customary time period for inpatient?

22 PROBATION OFFICER (MR. MARSHALL): It's been
23 extended. It was previously 60 days. I think originally it
24 was 90 days and then it got cut to 60 days. Now it's back to
25 90 days. But that is the standard period.

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1 THE COURT: And that's what Gosnold would consider
2 to be the appropriate duration --

3 PROBATION OFFICER: Yes.

4 THE COURT: -- outside duration?

5 With respect to his AdCare counselor --

6 PROBATION OFFICER: Yes.

7 THE COURT: -- what does she have to say about the
8 interruption of his treatment for a period of time when he is
9 down at Plymouth and consequently isn't going to be treated?

10 PROBATION OFFICER: I just spoke with Susie Howard,
11 actually today. She only had the opportunity to meet with
12 Mr. Myers on one occasion, but she was -- that was because his
13 previous therapist left the agency. She told me -- she's a
14 treatment provider. So, she doesn't -- it's not her typical
15 position to recommend any period of incarceration. And, so,
16 she's really more focused on the treatment aspects of it.

17 THE COURT: Well, let me just understand how the
18 AdCare treatment would coincide with -- if at all -- the
19 Gosnold treatment.

20 PROBATION OFFICER: It wouldn't at this point. And
21 AdCare wouldn't return -- wouldn't come back into play until
22 after Gosnold. But she just had the opportunity to see him in
23 August for that one occasion, but I still thought for him to
24 touch base with her about this. But then after discharge from

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25 Gosnold, there would need to be an after care plan and that's

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1 when AdCare would come back into play.

2 THE COURT: All right. Well, before I hear from
3 Mr. Myers, I want to be certain that Mr. Myers does, in fact,
4 stipulate that the violations that are set forth in the
5 violation report are true, that he did engage in the violations
6 as described in the violation report.

7 MS. KELLEY: Well, if I just may, if you look on
8 page three of the report, Roman numeral II --

9 THE COURT: Right.

10 MR. KELLEY: -- I would just point out, for
11 example, special condition number one, at AdCare, you see there
12 is an April date. He was completely compliant during that time
13 period. It was not until August that he used and relapsed and
14 began this cycle where he was trying to get himself into
15 Faulkner.

16 THE COURT: If there is a dispute about it, I want
17 to know --

18 MS. KELLEY: Well, he tells --

19 THE COURT: -- just a moment --

20 MS. KELLEY: Yes.

21 THE COURT: -- what the AdCare reference is to
22 failure to attend individual sessions.

23 MS. KELLEY: He did fail to attend that session on
24 April 26th, but it was rescheduled. It wasn't as if he just
25 didn't go and didn't call and didn't reschedule that. I was

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1 not able to get his counselor on the phone as I think

2 Mr. Marshall says he was. So, I'm unable to report to the

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3 Court about his history there.

4 THE COURT: Well, as far as I understand, she was
5 not there. She was attending to him at the time.

6 MS. KELLEY: That's correct.

7 THE COURT: But what's the story on the April 26th
8 failure to report? Do you have some report from AdCare or
9 something like that?

10 PROBATION OFFICER: I don't have it on hand, Your
11 Honor. We did receive a fax incident report. I did speak with
12 his therapist after that session. Mr. Myers was a no call/no
13 show up for that appointment. He did have contact with his
14 therapist thereafter and they scheduled another session. But
15 he was a no call/no show for that session.

16 I would also like to point out that in July he
17 missed another session. They are talking about August as when
18 the non-compliance began. But he missed a drug test in July
19 and admitted to myself and the Probation Supervisor that he
20 started using in July. So the time frames there do coincide
21 with non-compliance.

22 THE COURT: Okay.

23 MS. KELLEY: Well, I would just like to say on
24 behalf of Mr. Myers neither one of us thinks that it's really
25 productive to go point by point through these dates. I mean,

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1 there were times when --

2 THE COURT: Well, you know, maybe it's not and then
3 maybe it is. My principal focus is going forward. But part of
4 going forward is a willingness to acknowledge what he decides
5 is, in fact, the case of non-compliance in the past. This kind
6 of "he didn't show up, but he got another appointment" strikes
7 me as carving it kind of thin. If he didn't show up, he didn't

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8 show up. He's supposed to show up. He's supposed to tell them
9 ahead of time. If he didn't do it, then that, it seems to me,
10 is a violation. Now, is it the most important violation in the
11 world? No. But it's a violation. And if he wants to trim on
12 what the violations are, well, we'll go through it step by step
13 and I'll decide whether or not there's a violation that's been
14 established here. I'm not forcing him to acknowledge something
15 that isn't true. On the other hand, it is, I think, part of
16 the resolution of the problem for him to recognize problems if
17 they exist. And it suggests an unwillingness to address the
18 problem if he maintains highly technical and ultimately
19 ineffective defensive postures with respect to this or efforts
20 to mitigate the seriousness of this. This is all a bundle.
21 And the bundle is that he stopped responding to -- as I read
22 this, stopped responding to his obligations as early as April
23 when he left Coca-Cola; that he decided to set up his own
24 schedule at AdCare, but didn't tell anybody ahead of time; and
25 then they started picking up drug usage. And that appears to

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1 be July -- not August, but July. Now, if he wants to tell me
2 that everything fell apart in August, I'll resolve the issue as
3 a matter of fact. They may be explanations, but they're not
4 excuses here.

5 So, I'm back to the question: Does he dispute any
6 of the allegations that are made in the violation report?

7 MS. KELLEY: No, he does not.

8 THE COURT: All right. So I'll hear from you,
9 Mr. Myers, if there's anything that you want to say.

10 MR. MYERS: Yes, Your Honor.

11 My relapse happened before July. I didn't
12 technically use before July. My issues came and I was going

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13 through a lot with the adjustment of Mr. Fred Wysanski, which
14 was my therapist there. He left and I went to Ms. Susie
15 Howard. And I didn't adequately address it then. I'm talking
16 months before. We're talking somewhere around May. And I
17 needed some help then. I didn't settle in and get it and it
18 led to this here. I am responsible for not showing up, trying
19 to circumvent and that's what I did. I do apologize to this
20 Court and to Probation for that inconvenience. When
21 Mr. Marshall -- he is lodging allegations that are true. He
22 was trying to help me and has been and I acknowledge that and I
23 accept it. The CARE program was something that I was
24 interested in and still is something I am interested in. I'm
25 here now in Plymouth hoping that the Court sees that, you know,

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1 the addiction is a disease. I'm not running around, you know,
2 doing crime. Yes, I have to purchase the drugs. I do believe
3 that's a crime. And that in itself constitutes problems and I
4 do apologize to the Court and Probation for the same thing and
5 the U.S. Attorney's Office and my attorney and my family.
6 Please excuse all of that. I do want help and I don't want to
7 run around determining what help is. I need help and I want
8 the help that the Court can give when the Court can give it.

9 And I thank you for allowing me to address this. I
10 am guilty of these violations.

11 THE COURT: All right. Thank you.

12 MR. MYERS: Thank you, Your Honor.

13 THE COURT: Well, of course, we're dealing with a
14 violation here that has a range of imprisonment of 8 to 14
15 months under the Guidelines. Those are advisory Guidelines and
16 have been since the inception. But I think there is some force
17 for what Probation says, that there has to be some punitive

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dimension to this to make clear that these violations constitute violations of the law and to assure a lasting recognition of the obligation to comply.

So, I'm going to impose one month in Plymouth, including the seven days of time served to date. Do I think that's productive in terms of going forward in treatment? Actually, yes. Because you have to understand, Mr. Myers, that when you engage in these violations, there is going to be

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punishment. There exists a stick. And what I have done, I think, if I read this correctly, is that the period of supervised release can extend 35 months. Is that right?

PROBATION OFFICER: That's correct. Let me make sure I am speaking the facts. He can technically do a 60-month period minus any time served.

THE COURT: And there would be available for punishment in the future another 35 months?

PROBATION OFFICER: I believe that 60 months is the maximum. Sixty months is the maximum term allowable under the statute.

THE COURT: As I read the Initial Appearance Bail Report, the report is that maximum imprisonment upon revocation is 36 months.

PROBATION OFFICER: Oh, for imprisonment, yes. That's correct.

THE COURT: Okay. So, with the one month taken off here, that will leave 35 months remaining.

PROBATION OFFICER: Sorry, Your Honor. I was thinking of supervised release. Yes, that's correct.

THE COURT: Okay. Now, with respect to supervised release, do you have a time period that you would recommend?

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23 we have done three years before.

24 PROBATION OFFICER: Well, Your Honor, my thoughts
25 about supervised release are somewhat impacted by CARE in that

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1 he would have an ability to earn 12 months off of that. And I
2 think that's an appropriate carrot for that program because
3 it's a lot of hard work. So, my initial thought was 24 months,
4 but then that could be cut down to only a year and I don't
5 think that's enough. So, I think I would lean more towards
6 making it an initial 36 months and then cutting it down. If
7 he's successful with the program, then we're still looking at
8 still two years of supervision upon release.

9 THE COURT: All right. That seems appropriate to
10 me. That is, I will impose -- having revoked, I will impose
11 one month, including the time served to date to be followed by
12 three years of supervised release, the first 90 days to be
13 served -- to be spent in inpatient at Gosnold, to be followed
14 by six months in a sober house that is satisfactory to the
15 Probation Office. The original terms and conditions of
16 supervised release will remain in place subject to that
17 modification and refocused on Gosnold and the sober house.

18 I will, in addition, direct that the defendant make
19 a good faith effort to obtain employment and that good faith
20 effort to include documenting in the absence of employment
21 contact with three potential employers every week for
22 Probation. It's not going to be enough to say "I can't get
23 employment." You've got to show that you have gone somewhere
24 to see somebody about getting a job.

25 I share Mr. Marshall's view that you're a very

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1 bright person, maybe too bright for your own good sometimes.

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2 And someone with your capacities can get a job and serve your
3 family that way. And that is, it seems to me, one of the best
4 ways to avoid getting yourself into more trouble here.

5 I have imposed, as I said, 30 days to emphasize
6 that there is a punitive component to this. This is not just
7 come in and let the Judge try to get Probation to get you in
8 another program. The next time, if there is a next time, will
9 involve a much more extended period of imprisonment. As you
10 know, I can impose as much as 35 months of imprisonment. And
11 I'll give very careful consideration to that. I hope I don't
12 have to deal with that again, Mr. Myers. I hope that your
13 expressed desire to get on with things will work out.
14 Certainly, the program is all that we can hope for here, except
15 for one thing: That you take it to heart and let it work for
16 you and work with it rather than fighting it in little ways and
17 big ways the way in which you have done to date.

18 You should understand you have a right of appeal
19 and you'll want to discuss with Ms. Kelley the advisability of
20 exercising that right.

21 MS. KELLEY: If I may ask the Court for one
22 consideration on the sentence. With regard to the six months
23 in a sober house, in my experience with Gosnold, there are
24 times when an appropriate sober house can't be found or the
25 counselor who is working with the person is recommending

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1 something different. And I'd just like the possibility to be
2 kept open for us to come back to the Court and request a
3 modification.

4 THE COURT: I don't think -- at least as I can
5 see it -- that it would be necessary to come back to the
6 Court. It is a matter to be brought to Probation for their

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7 approval here.

8 MS. KELLEY: Okay. Thank you.

9 THE COURT: What we're looking at is something that
10 is the equivalent of a sober house and Probation, I'm sure,
11 will be guided by the recommendations of the people at
12 Gosnold.

13 MS. KELLEY: Okay.

14 THE COURT: So, if not a sober house as a sober
15 house, it's the therapeutic equivalent of that as defined by
16 Probation.

17 MS. KELLEY: Okay. Thank you.

18 THE COURT: I think that's sufficient to provide
19 the authority where it properly belongs, which is with
20 Probation making adjustments to the overall scope of what I had
21 in mind for supervised release.

22 MS. KELLEY: Okay.

23 THE COURT: Okay. Anything further?

24 MS. KELLEY: No. Thank you.

25 THE COURT: All right. Then we'll be in recess.

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1 Thank you.

2 RECESSED AT 12:15 P.M.

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4 CERTIFICATION

5 I certify that the foregoing is a correct
6 transcript of the record of proceedings in the above-entitled
7 matter to the best of my skill and ability.

8
9 /s/_____

10 Pamela R. Owens

Date

11 Official Court Reporter

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